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No. (1)

Supreme Court, U.S.
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In The

Supreme Court of the United States

TORINA A. COLLIS,

Petitioner,

v.

BANK OF AMERICA, N.A.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the reporting to a supervisor with authority to investigate and terminate, of personal bankers changing customer's bank accounts without their knowledge, causing them to incur fees of $20.00 a month, is protected activity under Sarbanes Oxley.

2. Whether Congress intended to protect whistleblowers for reporting fraudulent activities before the shareholders were defrauded, whereby, protecting whistleblowers for reporting fraudulent activities before it escalates to another Enron.

3. Whether a whistleblower needs to actually use the words "shareholder fraud" when reporting fraudulent activities or as the statute 1514A states, "reasonably believes constitutes a violation of sections 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, **or** any provision of Federal law relating to fraud against shareholders," is sufficient.

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OPINION BELOW

The Fourth Circuit Court of Appeals did not select its opinion for publication in the Federal Reporter and appears at Appendix A. The District Court did not publish an opinion in this case. Its pertinent rulings from the bench are reprinted in Appendix B.

JURISDICTION

The Fourth Circuit filed its decision on January 26, 2010. An extension of time to file the petition for a writ of certiorari was granted to and including June 25, 2010 on May 18, 2010 in Application No. 09A1050. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari.

STATUTORY PROVISION INVOLVED

18 U.S.C. Section 1514A

SARBANES-OXLEY ACT OF 2002

(a) Whistleblower Protection for Employees of Publicly Traded Companies. – No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 781), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge,

demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee –

(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by –

(A) a Federal regulatory or law enforcement agency;

(B) any Member of Congress or any committee of Congress; or

(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation

of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

INTRODUCTION

Imagine, doing your job and discovering unethical, fraudulent activities affecting a large amount of people. You tell your supervisors, as you think would be the normal course of action. Imagine, then your own co-workers accusing you of inappropriate behavior and suddenly you are unemployed, your means to survive are stripped from you. You try desperately to prove you did not do what you were accused of. It's their word against yours. You are out numbered. Then suddenly, years later the truth comes to light. An accuser, your former boss, in her own sworn affidavit, forgot what her original story was (that is usually what happens when you do not tell the truth).

This is the case of an innocent, hard working woman, in her attempt to expose fraud, being out right stripped of her lively employment and looking to the judicial system to afford her redress and the protection that she so rightfully deserves. This case is unique as it affects citizens on a nationwide level. It could be your mother, father, sister, brother, minister, babysitter, husband, wife. These are real people. This case is about breaking and exposing the "code of silence" on corporate corruption. This is a case of principle and integrity and fighting for rights.

This country is in the shape it is in because people have given up hope and are afraid to fight for their rights as United States citizens. They are afraid of large corporations and the Government. For far too long citizens have been stripped of their rights, accused of things they did not do, and afforded no redress. Torina Collis will forever fight for principle. She will not sit back and allow corruption and deceit to flourish if she can help it. That is probably why she is left representing herself against the largest bank in the United States.

No one should have to endure the pain and humiliation that Torina Collis, Petitioner, has had to endure for reporting fraudulent activities in her work place and trying to put an end to corporate corruption and deceit. That is the very essence of the protection of the law. This case is likely to have a significant impact on a number of cases in the future. It is likely to affect a large majority of the U.S. population and Petitioner will show the importance of an issue on a national basis and it is imperative that the issue be resolved as quickly as possible. Crime, corruption, deceit. This case is about how quickly the public can begin to trust in the banking system and their money can be safe and secure. This case is about protecting whistleblowers who put their jobs and livelihood on the line to stand up to a large corporation and defend customers, shareholders, and all employees who have the absolute right to be protected under the law.

Petitioner was a role model employee who excelled in her role as a Sr. Personal Banker at Bank of America in Beltsville, Md. Petitioner received commendations on a regular basis from both customers and employees. One day this would come to a drastic halt. Petitioner began reporting fraudulent activities occurring at numerous branches of the bank. Respondents wrongfully terminated Petitioner for reporting fraudulent activities to a person with authority to terminate her. Petitioner was pleading with someone to assist her in stopping the fraudulent activities. Customers' accounts are being changed without their knowledge and they are incurring fees of $20.00 a month. Respondents back-dated a write up for February 22, 2005 and gave Petitioner that write up and another write up on the evening of February 24, 2005. Respondents terminated Petitioner over the phone on February 25, 2005. Petitioner filed a complaint with the Department of Labor OSHA under the Sarbanes-Oxley Act. Respondents told Department of Labor that Petitioner was written up on two separate days that week, therefore, she was terminated. Department of Labor dismissed the complaint. Years later Petitioner would prove, through court records, that Respondents gave false information to the U.S. Department of Labor Federal Investigators. Petitioner had no idea just how many years the fight would last, but she is determined to seek justice.

Petitioner still suffers today from the effects of Respondent's misconduct. She suffers the lost reputation and diminished employment opportunity that comes with being fired from a bank.

STATEMENT OF THE FACTS

Ms. Collis was employed at Bank of America as a personal banker from October 2000 until she was terminated on February 25, 2005.

In approximately December of 2003, Ms. Collis approached her supervisor Mr. Joy and notified him that customers accounts were being changed without their knowledge. Mr. Joy, employed with Bank of America at the time for over 20 years, told Ms. Collis "don't waste your breath, they (meaning corporate) know it's going on but they'd have to get rid of 90% of the bank to stop it." Again in June 2004, a customer came in and asked why she had a dollar deducted from her account and mailed to her in the form of a check. Online banking and bill pay was set up without the customer's knowledge. The customer also had an Advantage account set up without her knowledge. With Advantage, the customer must maintain $5,000 in the checking account to avoid a $20.00 monthly fee. The customer was irate.

Ms. Collis told Melody Vaughn, her then banking center manager that Jean Rene Tchoski had set up the accounts without the customer's knowledge. Ms. Vaughn promised to investigate. Ms. Vaughn would

later promote, with the help of the regional managers, Mr. Tchoski to a banking center manager of his own branch. This fraudulent activity was being repeated in other banking centers as well. Ms. Collis was reporting this activity up the chain. The activity was occurring in Maryland, District of Columbia and Virginia. Ms. Collis would later inform the newest member to the regional team, Mr. Scott Meehan. In November of 2004, Ms. Collis met with Mr. Meehan to inform him of the fraudulent activities and repeated harassment she was receiving. Mr. Meehan had just moved from North Carolina. Mr. Meehan promised Ms. Collis he would investigate and that it would take awhile. Up until that meeting, Ms. Collis received numerous commendations from employees and customers as well. Ms. Collis was a role model employee. (Appellants App. 126-145, Fourth Circuit Court of Appeals)

The harassment continued and Ms. Collis phoned Mr. Meehan to find out what was happening with the investigation. Mr. Meehan told Ms. Collis it was taking a while longer since she brought so much to his attention. In December 2004, Ms. Collis would report to Mr. Meehan that now Mr. Ricardo Grant, personal banker, pulled his own account information up on Ms. Collis' computer to give the appearance Ms. Collis was trying to look in his account. (Appellants App. 146-148) Ms. Vaughn told Ms. Collis to work at the front desk and log in. Ms. Vaughn would call Ms. Collis away from the front desk for a moment and upon return Ms. Collis noticed Mr. Grant had looked up his accounts on the computer she was

signed in on. Mr. Meehan stated in his affidavit, that in the fall and winter of 2004 and 2005 he spoke with Vaughn about Collis' rude behavior. This contradicts the letters Collis received from not only Ken Lewis, but other associates and Vaughn and Holloway themselves.

In January 2005, Ms. Collis received a letter from Mr. Ken Lewis, regarding the outstanding customer service she exuded with a customer who wrote the corporate office. (Appellants App. 149)

On approximately February 15, 2005, Ms. Vaughn approached Ms. Collis and accused her of falsifying her time sheets. Ms. Collis worked overtime weekly and would be the last person to ever falsify her time sheets. Ms. Vaughn did this in front of customers. On February 16, 2005, Ms. Collis asked Ms. Vaughn if she could leave early, instead of 6:30 pm, 5:30 pm, since she worked over an hour early on February 14. Ms. Vaughn said no. At 4:30 pm Ms. Vaughn told Ricardo Grant and Tara Gallman (personal bankers) to leave early. That was unusual for her to tell bankers to leave 45 minutes early. Ms. Collis thought since they were able to leave early, it would not be a problem for her to leave at 6:05 instead of 6:30. Collis had been struggling with pain due to her nerve disease which the bank was aware of.

On February 17, 2005, Ms. Collis told Mr. Meehan about Ms. Vaughn accusing her of falsifying her time sheets and had asked what was happening

with the investigation. Mr. Meehan said he was now waiting for Mr. Walter Frye, the New Account Executive for the Region from North Carolina, to get back to him. Ms. Collis told Mr. Meehan she would have to possibly take alternative measures and go to North Carolina to corporate and inform them because it was getting really bad. All the while customer's accounts were still being changed without their knowledge.

On February 23 and 24, 2005, Ms. Collis was being subjected to quite a bit of harassment by Lisha Thorne Holloway. For no reason, Ms. Holloway told Ms. Collis to get back to her office. Ms. Holloway told Ms. Collis that she was dismissed for the day. Ms. Collis was in shock and was in severe pain due to the mental abuse. The regional office was called and the administrator, Anita Horace, told Ms. Holloway to allow Ms. Collis to stay and work. Later at approximately 4:30 p.m., on February 24, Ms. Vaughn would come back from her 2 day conference in Baltimore, Md. and call Ms. Collis to her office to go over the events. Ms. Vaughn had a back-dated write up dated February 22, 2005 and Ms. Holloway had a write up dated February 24, 2005. Both were given to Ms. Collis at approximately 5:30 p.m. Ms. Collis did not sign because the allegations were false. Ms. Vaughn told Ms. Collis to just bring them in the next day signed.

Ms. Collis phoned North Carolina personnel department and lodged another formal complaint and told them about the back-dated write ups. Ms. Dina Rutherford told Ms. Collis it would take a while to

investigate. She said she needed to talk to Mr. Meehan. Ms. Rutherford said "Did Mr. Meehan know about the fraud?" Ms. Collis said "yes, I told him and he said he was investigating it."

Ms. Collis called out sick the next morning due to much physical pain and Mr. Meehan, Regional Sales manager, was there to terminate her. Ms. Vaughn gave Mr. Meehan the phone and Mr. Meehan told Ms. Collis "Torina, due to your write ups this week, you are terminated." Ms. Collis said, "What, Scott, you know I have been complaining to you and you know what they have done to me. You won't hear my side of the story?" Mr. Meehan would not listen to Ms. Collis' side of the story and told her "Now you can take whatever alternative measures you need to take."

Shocked and crying, Ms. Collis called personnel and they were shocked Mr. Meehan fired her. Ms. Rutherford told Ms. Collis after speaking with Mr. Meehan, he admitted she told him about the fraud, but said "that's not why I terminated her, I terminated her because she had inappropriate behavior". Ms. Rutherford finished her internal investigation April 2005. Mr. Meehan was gone from the bank in April 2005. In February 2008, Mr. Meehan was back at the bank and had signed an affidavit that Ms. Collis had inappropriate behavior. (Appellants App. 34) That affidavit was presented in a Summary Judgment Motion in the U.S. District Court in Greenbelt, Md.

Ms. Collis filed an action with the Department of Labor in May 2005 under the Sarbanes-Oxley Act of 2002 under the whistleblower protection.

Bank of America gave a statement to the Federal Investigators that Ms. Collis would have been terminated anyway as she was clearly written up on two separate occasions, February 22 and February 24, 2005. All the while knowing the statement was false. The Secretary of Labor dismissed Ms. Collis' complaint relying on that statement. Bank of America's counsel, Elena Marcuss of McGuire Woods, LLP, had Ms. Vaughn and Ms. Holloway sign affidavits in February of 2008 which stated that now Ms. Collis stormed out of the meeting on February 24, 2005 after being presented with the two write ups. (Appellants App. 37-41) (Appellants App. 193-195) Bank of America has not shown by clear and convincing evidence it would have terminated such an outstanding employee had she not blown the whistle. Tampering with evidence is clearly a sign of some sort of foul play.

Ms. Collis filed her action in the U.S. District Court in Greenbelt, Md. on May 26, 2006. (Appellants App. 10) Ms. Collis was deposed twice, once being pro se. (Appellants App. 65-106) (Appellants App. 159-183) She gave numerous incidents of the complaints she made about the fraudulent activities and stated it was not just in the Beltsville branch. The District Court of Maryland dismissed Ms. Collis' case on Summary Judgment suggesting that customer's accounts being changed without their knowledge is

them just "being unfairly treated." The fraud was taking place during Ms. Collis' employment and reporting of the activities and continues years later after her termination. (Appellants App. 239-244).

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD RESOLVE THE SPLIT AMONG THE CIRCUITS – AND THE DISAGREEMENT BETWEEN SOME CIRCUITS AND CONGRESS – AS TO WHETHER THE SIGNIFICANCE BEHIND THE SARBANES-OXLEY ACT OF 2002 IS TO PROTECT WHISTLEBLOWERS WHO REPORT FRAUD BEFORE SHAREHOLDERS ARE AFFECTED, WHEREBY PROTECTING WHISTLEBLOWERS FOR HAVING A REASONABLE BELIEF A FEDERAL LAW IS BEING VIOLATED AND NOT NECESSARILY USING THE WORDS SHAREHOLDER FRAUD WHEN REPORTING THE FRAUDULENT ACTIVITIES.

Summary Judgment is appropriate where there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56. The material facts are those identified by controlling law as essential elements of claims asserted by the parties. A genuine issue as to such facts exists if the evidence forecast is sufficient for a reasonable trier of fact to find for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477

U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Accordingly, such a motion should not be granted unless it appears "beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 46 (1957). In the instant case, there are genuine issues of material facts. Collis did not have inappropriate behavior and she did not falsify her time sheets.

In order to establish a prima facie case under Sarbanes-Oxley, an employee must prove that she (1) reasonably believed that her employer was breaking the law; (2) engaged in whistleblowing activity as defined by the statute; 3) suffered an adverse employment action; and (4) that there was a causal connection between the whistle blowing activity and the adverse employment action. Welch v. Cardinal Bankshares Corp., 2003-SOX-15 at 35 (ALJ 2004). Once an employee has met this burden, he is entitled to relief unless the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected activity. Id. As the statutory language makes clear, the first element does not require the employee to prove that the employer actually violated the law. Welch, supra, at 36.

The primary objective of Sarbanes-Oxley is to reinforce confidence in the securities markets and catch fraud before shareholders are defrauded. Sarbanes-Oxley protects employees who in good faith

report or complain about corporate activities inconsistent with the interests of the company's shareholders.

Section 806 does not require whistleblowers to identify the statutory provisions they believe are being violated. "If Congress had intended to limit the protection of Sarbanes Oxley . . . or to have required complainants to specifically identify the code section they believe was being violated, it would have done so." Id.

A "good faith" standard is also entirely sensible. Given the complexities of the violations that employees may complain about an employee should not be required to have a professional's sophisticated understanding of the intricacies of federal securities and criminal law to be protected from retaliation.

A reasonable jury could conclude that Collis complained of fraudulent activities that affected a significant amount of customers, whereby would ultimately affect shareholders.

The bill makes it easier for an individual (or the Special Counsel on individual's behalf) to prove that a whistleblower reprisal has taken place. To establish a prima facie case, an individual must prove that the whistleblowing was a factor in the personnel action. This supersedes the existing requirement that the whistleblowing was a substantial, motivating or predominant factor in the personnel action. One of many possible ways to show that the whistleblowing was a factor in the personnel action is to show that

the official taking the action knew (or had constructive knowledge) of the disclosure and acted within such a period of time that a reasonable person could conclude that the disclosure was a factor in the personnel action. The bill establishes an affirmative defense for an agency. Once the prima facie case has been established, corrective action would not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of the disclosure. Clear and convincing evidence is a higher standard of proof than the preponderance of the evidence standard now used. 135 **Congressional Record p. S2784 (1989).**

II. SECTION 301 OF THE SARBANES-OXLEY ACT

This section requires that every publicly traded corporation have an independent "audit committee" which "establish procedures for (A) the receipt, retention, **and treatment** of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; 15 U.S.C. § 78f(m), and (B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters." It also requires that employee complaints be handled independently from the management of the publicly traded company in a professional and effective manner. Congress also provided that any company that fails to establish the procedures required by SOX Section 301 would be

"de-listed" as a publicly traded company from the stock exchanges.

It will not be sufficient for audit committees to simply refer complaints to company management or corporate counsel to investigate. Mr. Meehan's own affidavit stated he gave it to corporate security to investigate. Corporate Security was in the regional office of Bank of America in Greenbelt, Md. Outside technical experts should have been hired to evaluate the merits of Collis' complaint. There should be no conflict of interest. Fraud is an essential element of a Sarbanes-Oxley claim. Implicit in the concept of "fraud" is an element of intentional deception that would impact shareholders or investors. Wengender v. Robert Half Int'l, Inc., 2005-SOX-59, at 15 (ALJ Mar. 30, 2006). In Collis' case, customer's accounts are being changed without their knowledge (intentional deception) and incurring fees of $20.00/month. The illegal revenue generated is being reported to shareholders (that would impact shareholders).

In Allen v. Administrative Review Board, No. 06-60849, A (DOL) ALJ found no merit to the complaints and the appeals court agreed, dismissing the claims. The court said that one of the employees, who was an accountant, should have known the errors she alleged did not violate federal securities laws. In Allen v. Stewart Enterprises, Inc., the ALJ found the "concerns about possible violations of state laws which could result in sanctions and revocation of respondent's state license" not protected activity because Section 806 only provides protection for reporting

violations of the enumerated fraud provisions, and the ARB affirmed. 2004-SOX-60, 61 & 62 (ALJ Feb. 15, 2005).

The Allen court held: "Importantly, an employee's reasonable but mistaken belief that an employer engaged in conduct that constitutes a violation of one of the six enumerated categories is protected." The Allen Court, however, has held that while the objective reasonableness of an employee's belief can be decided as a matter of law in some cases, "the objective reasonableness of an employee's belief cannot be decided as a matter of law if there is a genuine issue of material fact. . . . (and if) reasonable minds could disagree on this issue, the objective reasonableness of an employee's belief should not be decided as a matter of law." Allen v. Administrative Review Board, 514 F.3d 468 (5th Cir. 2008). The Fourth Circuit has specified that the objective reasonableness inquiry is a mixed question of law and fact which can be decided as a matter of law in particular cases, and that it would be error to hold that it is always decided as a matter of law. Welch v. Chao, 536 F.3d 269, at 278 n.4 (4th Cir. 2008).

In Collis' case, Bank of America did not attempt to correct it, and is concealing it, and therefore is inapposite and Collis had a reasonable belief that Bank of America engaged in conduct that constitutes a violation of one of the six enumerated categories.

In Frederickson v. Home Depot U.S.A., Inc., 2007-SOX-13 (ALJ July 10, 2007), complainant

claimed that respondent had a policy of recording items as damaged instead of for "store use" in order to defraud vendors out of refunds. The complainant had not engaged in protected activity because he did not have a reasonable basis to believe that the policy extended beyond the store he worked in or that the policy was of a magnitude sufficient to support a reasonable belief that a reasonable investor would rely upon such information, according to the ALJ.

In Taylor v. Wells Fargo, Texas, 2004-SOX-43 (ALJ Feb. 14, 2005), aff'd ARB 05-062 (ARB June 28, 2007), an ALJ found that complainant reasonably believed backdating the letters of credit constituted falsifying a bank document, which she believed "would constitute an illegal and criminal act." Respondent argued there was no specific evidence it was committing fraud, the ALJ noted that an actual violation of the law is not required. On appeal, both the ALJ and the ARB found that complainant did not prove other elements of her prima facie case relating to causality, and the Fifth Circuit approved of those determinations upon its review. Taylor v. Admin. Rev. Bd., 288 Fed. Appx. 929 (5th Cir. 2008).

In Livingston v. Wyeth July 28, 2006 U.S. D.C. N.C. (4th Cir.), his colleagues and subordinates complained to the Human Resources Director that Livingston was a poor leader, was often unavailable or absent, routinely lost his temper, was argumentative and unstable, had an inability to relate to his colleagues and regularly abused his subordinates. Based on Livingston's own testimony, no reasonable

trier of fact could disagree that Livingston would have been discharged for his insubordination at the holiday party, irrespective of his alleged protective activity.

On May 13, 2002, Wyeth issued Livingston a written warning for use of "foul and abusive behavior" toward subordinates. The written warning stated that "further difficulties in this area will result in further discipline up to and including termination." (Id.) Shortly thereafter, on or about May 15, 2002, Livingston sent identical e-mail apologies to eight Wyeth employees regarding his "inappropriate language," "salty remarks," "intense debating style," and behavior "which may have caused (them) personal pain and discomfort."

"Moreover, even if there were protected activity, Defendants have pointed to clear and convincing evidence that Livingston would have been terminated for insubordination unrelated to the protected activity."

In Livingston v. Wyeth, Inc. No. 06-1939, 2008 WL 756068 (4th Cir. March 24, 2008), Livingston alleged that Wyeth violated Section 1514A by terminating his employment in retaliation for expressing concerns about training. This case is inapposite to Collis', as training deficiencies is entirely different than defrauding customers of their money at a bank and ultimately, at the core, affect shareholders. Furthermore, Livingston does not dispute his behavior as Collis is disputing the allegations that she had inappropriate behavior.

The Fourth Circuit found that, even if Wyeth made any of the allegedly false statements, none would be "material." Under Supreme Court authority, for information to be material, there must be a "substantial likelihood that a reasonable shareholder would consider (the matter) important to his decision to invest." TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449, 96 S. Ct. 2126, 48 L. Ed. 2d 757 (1976)

In Livingston v. Wyeth, Inc., (M.D. N.C. July 28, 2006), (4th Cir. 2008) the court found that "[t]o be protected under Sarbanes-Oxley, an employee's disclosures must be related to illegal activity that, at its core, involves shareholder fraud". O'Mahoney v. Accenture Ltd., 537 F. Supp. 2d 506, 517 (S.D.N.Y. 2008) (noting that "[Section 806] clearly protects an employee against retaliation based upon the whistleblower's reporting of fraud under any of the enumerated statutes regardless of whether the misconduct relates to 'shareholder' fraud").

In Reyna v. Conagra Foods, Inc., 506 F. Supp. 2d 1363 (M.D. Ga. June 11, 2007), parties debated whether reports of mail and wire fraud were protected activity regardless of whether that fraud relates to fraud against shareholders. In reading the plain meaning of the statute, the court in Reyna concluded that "[t]he statute protects an employee against retaliation based upon that employee's reporting of mail fraud regardless of whether that fraud involves a shareholder of the company."

In Collins v. Beazer Homes USA, Inc., 334 F. Supp. 2d 1365 (N.D. Ga. 2004), the district court denied defendants' motion for summary judgment because it found a genuine issue of material fact existed whether the plaintiff had engaged in protected activity. The plaintiff contended that these disclosures were protected because they alleged attempts to circumvent the company's system of internal accounting controls and therefore stated a violation of Section 13 of the Exchange Act, 15 U.S.C. § 78m(b) ("no person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls"). The court rejected the company's assertion that the complaints were too vague to constitute protected activity, noting that the company had taken the allegations seriously and investigated the claims. Moreover, although the court agreed that "the connection of Plaintiff's complaints to the substantive law protected in Sarbanes-Oxley [wa]s less than direct," it found that "the mere fact that the severity or specificity of her complaints does not rise to the level of action that would spur Congress to draft legislation does not mean that the legislation it did draft was not meant to protect her." 334 F. Supp. 2d at 1377.

In Reddy v. MedQuist, Inc., 2004-SOX-35, at 3 (ALJ June 10, 2004), the ALJ dismissed a SOX whistleblower retaliation claim because the complainant's communications to management "concerned internal company policy as opposed to actual violations of federal law." The ARB affirmed the ALJ's decision on appeal, ruling that the complainant's communications

failed to "provide information (about conduct) she reasonably believed constituted violations of the federal fraud statutes, or an SEC rule or regulation, or any federal law pertaining to shareholder fraud." Reddy v. MedQuist, Inc., ARB Case No. 04-123, at 7 (Sept. 30, 2005).

In Johnson v. Stein Mart, Inc., No. 3:06-cv-00341 (M.D.Fla. June 20, 2007) the Employee Plaintiff had been hired as a Buyer at the Defendant's corporate headquarters, and was later promoted to be a Planner. While there she complained to management about (1) the collection of markdown allowances from vendors, (2) the changing of season codes on older inventory, and (3) the accounting for the value of inventory.

The Defendant argued that the Plaintiff failed to establish a prima facie case on the element of protected activity because she did not have a reasonable belief that these practices were illegal because she had no accounting background and had no knowledge of the Defendant's accounting practices. The district court rejected Defendant Stein Mart's argument because the Defendant had treated the Plaintiff's complaints as reasonable enough to have warranted an internal investigation.

On February 7, 2008, Judge Marrero held in O'Mahoney v. Accenture Ltd., 2008 WL 344710 5th Cir. (S.D.N.Y 2008) that SOX "contains six provisions that enumerate six specific forms of misconduct which, if reported by an employee, protect the whistleblower

from employer retaliation: (1) § 1341 (mail fraud); (2) § 1343 (wire fraud); (3) 18 U.S.C. § 1344 (bank fraud); (4) 18 U.S.C. § 1348 (securities fraud); (5) any rule or regulation of the SEC; **or** (6) any provision of federal law relating to fraud against shareholders." Judge Marrero rejected the employer's contention that the phrase "related to fraud against shareholders" modifies each of the preceding phrases.

In Welch v. Cardinal Bankshares Corp, ARB Case 05-064 (ARB, May 31, 2007) his court commented that its ruling "does not suggest that a whistleblower must identify specific statutory provisions or regulations when complaining of conduct to an employer, nor do we address the burden upon the parties in the proceedings before the ALJ."

Congress passed Sarbanes-Oxley to combat financial crimes and fraud committed by corporate insiders.

Senator Patrick Leahy, the principle sponsor of the whistleblower law, explained its meaning on the floor of the Senate:

> We included meaningful protections for corporate whistleblowers, as passed by the Senate. We learned from Sherron Watkins of Enron that these corporate insiders are the key witnesses that need to be encouraged to report fraud and help prove it in court. Enron wanted to silence her as a whistleblower because Texas law would allow them to do it. Look what they (Enron) were doing on this chart. There is no way we could have known

> about this without that kind of a whistleblower . . . The provisions Senator Grassley and I worked out in Judiciary Committee make sure whistleblowers are protected.

See 148 Congressional Record, p. S7358 (July 25, 2002).

DOL Judge Stuart A. Levin rejected a corporate request to dismiss a SOX whistleblower case on a narrow technicality by referencing the legislative history that gave rise to the corporate reform law:

> Shortly before, and contemporaneous with, its enactment, accounting scandal in some circles were causing painful economic dislocations among investors, lenders, and employees of several major firms and undermining investor confidence in the integrity of financial markets. Finding the status quo unacceptable, Congress set about to refashion the regulatory and private sector environments which had failed to detect or affirmatively allowed deception in reporting of corporate value and performance and permitted the types of shenanigans which brought several large concerns down in ruins and rocked others to their very foundations. To prevent the recurrence of such chicanery in the future, Congress examined the ethical standards and accounting and reporting systems flaws and failures which, in some instances, allowed fraud to flourish. Intent upon reforming the regulatory and private sector environments which allowed the fleecing to take place, Congress was determined

> to reassure the markets that effective preventive and exposure measures could be formulated, and it turned, among other remedies, to a valuable deterrent resource it had used in the past to help insure compliance with its mandates: employees within an organization who were willing to blow the whistle. Congress has long employed the inside whistleblower as a first line defense against various types of abuses which it deems unacceptable. Moreover, it understands the risks it beckons the whistleblower to accept, and it endeavors to protect them. Under such circumstances, it does not serve the purpose or policies of the act to take too pinched a view of the remedial statute when it comes to protecting those in an organization who can address the concerns Congress sought to correct.

See Morefield v. Exelon Services, Inc., 2004-SOX-2, D&O of ALJ, p. 2 (January 28, 2004) citing Representative Bentsen, 148 Cong. Rec. H5462-02, at *H5467.

> This bill would create a new provision protecting employees when they take lawful acts to disclose information or otherwise assist criminal investigators, federal regulators, Congress, their supervisors (or other proper people within a corporation), or parties in a judicial proceeding in detecting and stopping actions which they reasonably believe to be fraudulent.

(Senate report No. 107-146, p. 19 (2002)).

Under established case law, the DOL prohibits employers from discharging employees even if they only suspect that the employee engaged in protected conduct.

Smith v. ESICORP, Inc., 93-ERA-16, D&O of Remand by SOL, at 9-11 (March 13, 1996) (discussing circumstances behind management suspicion that employee engaged in protected activity).

Congress looked toward whistleblowers. They were not only concerned about corrupt accounting practices that harmed innocent investors, but also a "culture of silence" that allowed unethical corporate misconduct to go unreported and allowed illegal conduct to remain undetected. Employees are in a position to learn about unethical or illegal practices. An investor will naturally be nervous and probably sell his stock if he knew the company he invested in is defrauding customers and not accurately reporting revenue. Collis believes Congress intended to protect such a whistleblower as herself who was and still is concerned about hard working citizens of this country being out right defrauded of their hard earned money from underneath their nose and at its core defrauds shareholders.

Whistleblowers are frequently "the only firsthand witnesses to the (activity). They are the only people who can testify as to 'who knew what, and when. . . .'" Senate Report No. 107-146, at 10 (2002)

This process requires "careful evaluation of all evidence pertinent to the mind-set of the employer

and its agents regarding the protected activity and the adverse action taken." Timmons v. Mattingly Testing Services, 95-ERA-40, D&O of Remand by ARB, at 10 June 21, 1996.

Congressional Record p. S7420 states:

> Section 806 of the Act would provide whistleblower protection to employees of publicly traded companies who report acts of fraud to federal officials with the authority to remedy the wrongdoing or to supervisors or appropriate individuals within their company. Although current law protects many government employees who act in the public interest by reporting wrongdoing, there is no similar protection for employees of publicly traded companies who blow the whistle on fraud and protect investors. With an unprecedented portion of the American public investing in these companies and depending upon their honesty, this distinction does not serve the public good.
>
> In addition, corporate employees who report fraud are subject to the patchwork and vagaries of current state laws, even though most publicly traded companies do business nationwide. Thus, a whistleblowing employee in one state (e.g., Texas, see supra) may be far more vulnerable to retaliation than a fellow employee in another state who takes the same actions. Unfortunately, companies with a corporate culture that punishes whistleblowers for being "disloyal" and "litigation risks" often transcend state lines, and most

corporate employers, with help from their lawyers, know exactly what they can do to a whistleblowing employee under the law.

U.S. laws need to encourage and protect those who report fraudulent activity that can damage innocent investors in publicly traded companies. The Act is supported by groups such as the National Whistleblower Center, the Government Accountability Project, and Taxpayers Against Fraud, all of whom have written a letter placed in the Committee record calling this bill "the single most effective measure possible to prevent recurrences of the Enron debacle and similar threats to the nation's financial markets."

This provision would create a new provision protecting employees when they take lawful acts to disclose information or otherwise assist criminal investigators, federal regulators, Congress, their supervisors (or other proper people within a corporation), or parties in a judicial proceeding in detecting and stopping actions which they reasonably believe to be fraudulent. Since the only acts protected are "lawful" ones, the provision would not protect illegal actions, such as the improper public disclosure of trade secret information. In addition, a reasonableness test is also provided under the subsection (a)(1), which is intended to impose the normal reasonable person standard used and interpreted in a wide variety of legal contexts (See generally Passaic Valley Sewerage Commissioners v. Department of Labor, 992 F. 2d

> 474, 478). Certainly, although not exclusively, any type of corporate or agency action taken based on the information, or the information constituting admissible evidence at any later proceeding would be strong indicia that it could support such a reasonable belief. The threshold is intended to include all good faith and reasonable reporting of fraud, and there should be no presumption that reporting is otherwise, absent specific evidence.

Congressional Record S7420.

III. MOTIONS HEARING ON SUMMARY JUDGMENT

During the Motion for summary judgment hearing on August 13, 2008, the District Court recited the case from both the perspective of the Plaintiff and Defendant. (Appellants App. 210-224). The District Court as well as the U.S. Court of Appeals for the Fourth Circuit heavily rely on Livingston v. Wyeth, Inc. In Livingston, that case is regarding deficient training activities. In addition, Livingston admits he had rude behavior and would have been terminated anyway. Livingston is inapposite to this case as Ms. Collis did not have inappropriate behavior. The Circuits are split as to whether an employee must state shareholder fraud. In the Collis case, there is at the core shareholder fraud. If shareholders were aware there was fraud taking place, they would surely want answers. If a class action occurs for

customers to get their money back, that would ultimately affect shareholders. It seems only logical you would want stop the fraud before the shareholders are affected. I am certain Congress intended to protect a whistleblower such as myself. Usually the only way to detect fraud is within the company. This case is of national significance and importance. It affects a large segment of the population. The amount of money being taken from customers accounts could be in the hundreds of thousands or even millions. This important issue needs to be resolved and should be done by the U.S. Supreme Court.

CONCLUSION

Collis needs her day in court. This Country needs Collis' day in court. No one at the bank listened to her complaints and took them seriously as required by the law and took any measures to correct the fraud. The bank needs to be put in a position where they will have to answer in court once and for all and start to not only take whistleblower complaints seriously, but take this whistleblower's complaints seriously.

The Court should grant the petition for a writ of certiorari and reverse the decision of the Fourth Circuit Court of Appeals.

Respectfully submitted,

TORINA A. COLLIS
Pro Se
13240 Star Gazer Place
Waldorf, MD 20601
(240) 508-5492

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Torina A. Collis,

Plaintiff-Appellant,

v.

No. 08-2058

Bank of America,
National Association,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Maryland,
At Greenbelt.
Peter J. Messitte, Senior District Judge.
(8:06-cv-01346-PJM)

Submitted: January 19, 2010
Decided: January 26, 2010

Before NIEMEYER, KING, and DAVIS, Circuit Judges

Affirmed by unpublished per curiam opinion.

COUNSEL

Torina A. Collis, Appellant Pro Se, Waldorf, Maryland. Elena D. Marcuss, McGuireWoods, LLP, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c)

OPINION

PER CURIAM.

Torina A. Collis filed a civil action alleging she was terminated in violation of the whistleblower provisions of the Sarbanes-Oxley Act, 18 U.S.C.A. 1514A (West Supp. 2009). Collis appeals the district court's order granting summary summary judgment, for reasons stated from the bench, in favor of the Defendant. Accordingly, we affirm. *See Livingston v. Wyeth, Inc.*, 520 F.3d 344, 351 (4the Cir. 2008) (discussing elements needed to establish a retaliation claim under the Act). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Torina A. Collis	*	
	*	
Plaintiff	*	Civil No. PJM-06-1346
v.	*	
	*	
Bank of America, N.A.,	*	
	*	
Defendant	*	

FINAL ORDER OF JUDGMENT

The Court having considered Defendant's Motion for Summary Judgment [Paper No. 35], it is, for the reasons stated on the record in open Court, this 13th day of August, 2008,

ORDERED

1. Defendant's Motion for Summary Judgment [Paper No. 35] Is **GRANTED**;
2. Final Judgment is granted in favor of Defendant and against Plaintiff on her claim for violation of the Sarbanes-Oxley Act; and
3. The Clerk of the Court shall **CLOSE** the case.

/s/

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MARYLAND

TORINA A. COLLIS,

Plaintiff,

v. **Civil Action: PJM-06-1346**

BANK OF AMERICA,

Defendant.

Wednesday, August 13, 2008
Greenbelt, Maryland

The above-entitled action came on for Motions Hearing proceedings Before the HONORABLE PETER J. MESSITTE, United States District Court Judge, in courtroom 4C at 2:03 p.m.

APPEARANCES:

On behalf of the Plaintiff:

MORRIS E. FISCHER, Esquire

On behalf of the Defendant:

ELENA D. MARCUSS, Esquire

Tracy Rae Dunlap, RPR, CRR **(301) 344-3912**
Official Court Reporter

The court agrees with the defendant in this case That the allegations are not of the sort of protected Activity that Sarbanes-Oxley is intended to address. This is not an allegation

that's ultimately related to Shareholder fraud. It's really an allegation that some Customers are being unfairly treated in one fashion or Another.

There is no indication this that there would Have been any obligation in these even four, five or Six instances, if there were that many, that the Plaintiff knew about; and it's not clear that she knew About that many, that that would have been the kind of Matter that would have to be reported to the Shareholders by anybody, and that in any case, whether The fact that what could have been some rogue activity By a few employees in a mulitmillion-dollar operation Would in any way be material to their decision to Invest in the company.

So whatever went on here, good, bad or Indifferent, the court agrees that as a matter of law, It establishes no violation under Sarbanes-Oxley. And Without visiting the issues of contributing factor and So on and so forth to her dismissal, the court grants The motion for summary judgment with regard to 06-1346, Paper Number 35.

CERTIFICATE

I, Tracy Rae Dunlap, RPR, CRR, an Official Court Reporter for the United States District Court of Maryland, do hereby certify that I reported, by machine Shorthand, in my official

capacity, the proceedings Adduced during the Motions Hearing proceedings in the Case of TORINA A. COLLIS versus BANK OF AMERICA,Civil Action Number PJM-06-1346, on August 13, 2008.

I further certify that the foregoing 26 pages Constitute the official transcript of said proceedings, As taken from my machine shorthand notes, of said Proceedings.

In witness whereof, I have hereto subscribed my Name, this 8th day of January 2009.

/s
Tracy Rae Dunlap, RPR, CRR
Official Court Reporter

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(2)

No. 10-259

Supreme Court, U.S.
FILED
OCT 6 - 2010
OFFICE OF THE CLERK

In The

Supreme Court of the United States

TORINA A. COLLIS,

Petitioner,

v.

BANK OF AMERICA, N.A.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

TORINA A. COLLIS
Pro Se Petitioner
13240 Star Gazer Place
Waldorf, MD 20601
(240) 508-5492
torina.collis@hotmail.com

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INTRODUCTION

Pursuant to U.S. Supreme Court Rule 15.8, Petitioner respectfully submits this Supplemental Brief to bring to the Court's attention to trial testimony from a separate related case. This trial took place over a year after this instant case was dismissed on summary judgment. Petitioner was able to question the key employees on the stand, and the testimony is relevant to this case. This brief also sites a recent article whereby Senator Patrick Leahy of Vermont, co-author of the Sarbanes-Oxley Whistleblower provisions, expresses his concerns regarding the lack of protections it is providing to whistleblowers.

Litigants and regulators have debated the scope of protections provided to whistleblowers under the Sarbanes-Oxley Act ("Sarbanes-Oxley" or "SOX") ever since its enactment in 2002. Some tribunals have held that whistleblowers seeking protection under Sarbanes-Oxley must allege fraud with adverse effects on investors, while others have suggested that no such showing is necessary to trigger the whistleblower protections of Sarbanes-Oxley.

Petitioner has no college education or any formal training relating to legal matters or Security laws. Petitioner was an employee at a bank and reported fraudulent activity.

Petitioner is submitting additional documentation in this supplemental brief. Petitioner was left with no choice but to represent herself as Plaintiff at a trial in a separate related case against Respondent

when the Federal District Judge of Southern Maryland took it upon himself to terminate Petitioner's attorney prior to trial without a request from Petitioner or her attorney. During the trial, Petitioner questioned many associates of the bank that were employed at the same period as Petitioner. Petitioner is including in this supplemental brief excerpts from the trial as she received the trial transcripts from two separate court reporters up through June 2010. The trial lasted 4 days.

Mr. Scott Meehan, the supervisor Petitioner reported the fraud to and who ultimately terminated Petitioner, was one of the employees being questioned. Petitioner questioned Mr. Meehan regarding if he recalled a conversation he had with Petitioner on February 17, 2005, 8 days before he terminated her abruptly. Petitioner told Mr. Meehan she would have to take alternative measures and go to Corporate in North Carolina. Mr. Meehan testified he did not "remember the exact language, but I do recall that you were, as I perceived it, were wanting to go over my head, I think is what that statement was." Mr. Meehan also testified that the statement Respondent gave the U.S. Department of Labor regarding that Petitioner was written up on two separate occasions was not accurate. Mr. Meehan testifies that he had knowledge of Petitioner's complaints of fraud and that he turned it over to a woman in Corporate Security. Mr. Meehan testifies that an affidavit stating Petitioner had inappropriate behavior was provided to him by Respondent's counsel.

Mr. Meehan never documented Petitioner's complaint of fraud as required under the Sarbanes-Oxley law. Mr. Meehan testified that Petitioner did not just report one personal banker opening accounts without the customer's knowledge, but the report was more broad based. Mr. Meehan also testified that he told Ms. Vaughn, on February 24, 2005, to go back and issue the corrective actions to Petitioner. These are the same corrective actions that were indisputably given on February 24, 2005, although one was back dated for February 22, 2005, to give the appearance that Petitioner was written up on separate occasions.

Petitioner is including testimony from Ms. Tara Gallman and Carmen Soria who testified they did not witness any inappropriate behavior from Petitioner. Mr. Walter Frye, the Region al Account Executive, was not aware of any inappropriate behavior displayed by Petitioner. In fact, his testimony was he thought Petitioner's termination was due to non-performance. Mr. Frye also testified Mr. Meehan never reported any fraud complaints made by Petitioner.

In addition, Petitioner is including portions of the letter Respondent's then in-house counsel, submitted to the U.S. Department of Labor with Respondent's position surrounding the termination of Petitioner. Not once was the false misrepresentation corrected. Respondent led the investigators to believe that Petitioner was written up on two separate days. Petitioner is including with this supplemental brief

the U.S. Department of Labor Secretary's findings, relying on the false misrepresentation.

Any complaint of fraud should be fully documented, even if it is apparent that no violation occurred. The documentation should memorialize the actions the employer took to investigate and resolve the complaint.

THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT SIGNED INTO LAW JULY 21, 2010

The **Dodd-Frank Wall Street Reform and Consumer Protection Act** (Pub.L. 111-203, H.R. 4173) is a *federal statute* in the *United States* that was signed into law by *President Barack Obama* on July 21, 2010. The Dodd-Frank Act makes favorable changes regarding whistleblower laws under the Sarbanes-Oxley Act Section 1514a, such as providing for a jury trial in federal court. Section 922 fortifies existing protections available to whistleblowers under the Sarbanes-Oxley Act of 2002.

EXCERPTS FROM CENTER FOR PUBLIC INTEGRITY ARTICLE DATED JULY 22, 2010

The Center for Public Integrity's staff writer, Michael Hudson wrote an article on July 22, 2010,

titled "Federal Bureaucracy Dismisses Most Sarbanes-Oxley Whistleblower claims." According to the article "figures available through June 30, 2010, the U.S. Department of Labor has upheld 25 whistleblower claims under the law and tossed out 1,066 claims, a winning percentage of little more than 2 percent for workers seeking whistleblower status."

"In a written statement to the Center, Senator Patrick Leahy of Vermont, co-author of the Sarbox whistleblower provisions, says 'When just over 2 percent of the cases brought to the Department of Labor are found in favor of the whistleblower, something is not working in the system.' Sen. Leahy also says he is concerned that the law has 'resulted in very little actual protection for the men and women who risk their careers to step forward.'"

"Republican Sen. Charles Grassley of Iowa, a long time supporter of whistleblowers, echoed Leahy's misgivings. 'The whistleblower provisions in the Sarbanes-Oxley law were intended as a safety valves to protect the public, shareholders and Americans' confidence in the marketplace,' said Grassley. 'The Department of Labor's dismal record for the whistleblowers who have come forward is of obvious concern and appears to fly in the face of the purpose of the protections in the law.'"

CONCLUSION

The U.S. Supreme Court spared the Sarbanes-Oxley Act of 2002 on June 28, 2010. According to statistics, there have been few whistleblowers protected under this law. There has been a misapplication of the properly stated rule of law. It is imperative that the U.S. Supreme Court intervene to safeguard the interests of the public. This Court needs to establish a national uniform understanding of the interpretation of the Sarbanes-Oxley Act of 2002 as it pertains to the retaliation against whistleblowers and what constitutes protected activity (under the law) sufficient to establish a Section 1514A cause of action.

Petitioner has suffered physically and mentally due to the actions of Respondent. Petitioner prays that this Court grants her Writ of Certiorari and finds that this premeditated, heinous act of retaliation by one of the largest banks in the world is reprehensible, thereby granting Petitioner the protections of the Sarbanes-Oxley Act of 2002, that she so rightfully deserves.

Wherefore, Petitioner prays that the highest Court in the land will grant Petitioner's Writ of Certiorari.

Respectfully submitted,

TORINA A. COLLIS
Pro Se
13240 Star Gazer Place
Waldorf, MD 20601
(240) 508-5492

BANK OF AMERICA

July 15, 2005

Bank of America
Legal Department
NC1-002-29-01
101 South Tryon St
Charlotte, NC 28255

VIA FEDERAL EXPRESS and Electronic Mail @hill.daid@dol.gov

Mr. David Hill, Investigator
United States Department of Labor
Occupational Safety and Health Administration
260 Buffalo Plaza, 142
Sarver, PA 16055

Re: Torina Ann Collis
Case No. 3-0050-05-014

Dear Mr. Hill:

The following serves as the Statement of Position of Respondent Bank of America ("BAC" or the "Bank"). BAC provides this statement in response to the Complaint filed with the United States Department of Labor, Occupational Safety and Health Administration (OSHA") by Torina Collis ("Ms. Collis").[1]

* * *

[1] This Statement of Position is based upon our current understanding and investigation of the facts and circumstances at the time this statement is submitted. By submitting this statement, BAC in no way waives its rights to present new or additional facts and/or arguments based upon subsequently acquired information and/or evidence.

Mr. David Hill
July 15, 2005
Page 2 of 4

II. Ms. Collis's Employment History and Termination

* * *

On February 22, 2005, Ms. Collis was given a written counseling for attendance and inappropriate behavior. On February 23 and again on February 24, management attempted to have a conversation with Ms. Collis. On both occasions, Ms. Collis again abruptly and rudely ended the conversation with the manager. Subsequently, Mr. Meehan notified Ms. Collis that her employment was terminated.

* * *

Mr. David Hill
July 15, 2005
Page 4 of 4

V. Conclusion

For the foregoing reasons, Ms. Collis's Complaint should be dismissed.

With best regards,

Janis W. Johnson
Assistant General Counsel
704-XXX-XXXX (for privacy intentionally blocked out by Petitioner)

[Petitioner, brings to this Courts attention, that the statement that Petitioner was written up on two separate days went uncorrected. The U.S. Department of

Labor relied on the false statement and issued the following findings on October 18, 2005.]

U.S. Department of Labor
Occupational Safety and Health Administration
The Curtis Center, Suite 740 West
170 S. Independence Mall West
Philadelphia, Pennsylvania 19106-3309

Telephone: 215 861-4900

Reply to the Attention of:
Richard D. Soltan

Certified Mail

October 18, 2005
Torina A. Collis
13240 Star Gazer Place
Waldorf, Md 20601

RE: Bank of America/Collis/3-0050-05-014
Secretary's Findings

Dear Ms. Collis:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by you (Complainant) against Bank of America (Respondent) on May 24, 2005, under the employee protection provisions of Title VIII of the Sarbanes-Oxley Act of 2002, Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, 18. U.S.C. 1514A, et seq., (hereinafter called SOX). In brief, you alleged that Respondent terminated your employment in retaliation for your having filed numerous verbal complaints with management officials that bank employees were opening bank accounts without the customer's knowledge.

Following an investigation by a duly authorized investigator, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region III, finds that there is no reasonable cause to believe that Respondent violated SOX and issues the following findings:

Secretary Findings

* * *

While Complainant now claims that opening these accounts without the customer's knowledge would give the impression of Respondent's success to the public, make Respondent's bottom line look better and in turn increase their stock value, there is no evidence that she made this connection to shareholder fraud when she made her complaints to management.

Further, Respondent contends that Complainant was terminated for her blatant display of disrespect to her manager. The decision to terminate Complainant was made without regard for any concerns she has ever raised regarding her former banking center. On February 22, 2005, Complainant was given a written counseling memo for attendance and inappropriate behavior. On February 23 and February 24, 2005 management attempted to have a conversation with Complainant. On both occasions, Complainant abruptly and rudely ended the conversation with the manager. Subsequently, Complainants employment was terminated. Respondent indicated that in response to Complainant's accusations, Respondent's

Corporate Security Department reviewed products offered by banking center personnel over a four-month period. Corporate Security found no evidence of fraudulent activity.

Even assuming that Complainant engaged in protected activity, the preponderance of the evidence indicates that such activity was not a contributing factor to Respondent's termination of Complainant's employment. Consequently, this complaint is dismissed.

* * *

Sincerely,

Richard D. Soltan
Regional Administrator

Cc: Respondent
Chief Administrative Law Judge, USDOL
USDOL/SOL
Securities & Exchange Commission

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

TORINA COLLIS, Plaintiff, v. BANK OF AMERICA NATIONAL ASSOCIATION, Defendant.	:	Civil Action No. PJM 06-2451 Greenbelt, Maryland Thursday, October 29, 2009 10:11 A.M.

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:
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13240 Star Gazer Place
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FOR THE DEFENDANT:
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Baltimore, Maryland 21202
410-659-4400

OFFICIAL COURT
REPORTER: LINDA C. MARSHALL,
(301) 344-3229

COMPUTER-AIDED TRANSCRIPTION
OF STENOTYPE NOTES

* * *

[13] **SCOTT MEEHAN,**
PLAINTIFF WITNESS, SWORN

THE DEPUTY CLERK: Please have a seat on the witness stand. Sir, please speak directly into the microphone, state your name and spell your last name.

THE WITNESS: Scott Meehan, M-E-E-H-A-N.

THE DEPUTY CLERK: Thank you.

* * *

[14] Q And what was your position there?

A I was a consumer market manager.

Q And what did that entail?

A Essentially, we were responsible for the supervision, the coaching, the audit responsibilities for operations of a set number of branches.

* * *

Q Do you recall the first time that you came in when you came up to my desk in the Beltsville branch banking center, the first time you had met me?

[15] A No, I don't.

Q Okay. It was approximately say September, October of 2004 and, Mr. Meehan, and I'd like to remind you, because I know you're currently with the bank, but that you are under oath here. Do you recall a time when you, that both of us met in the Greenbelt corporate office with Derrick Harris?

A I do recall that.

* * *

[16] Q Okay. So a particular time when you did come to the Beltsville branch, do you recall me telling you that Melody Vaughn was present in the banking center but that I had some issues to discuss? Does that ring a bell?

A Are you asking me what initiated the Greenbelt meeting?

Q Well, do you recall a conversation prior to the Greenbelt meeting where I said that I had some issues that I would like to discuss outside the banking center?

A I recall that you and I had a conversation where you wanted to discuss things in a private setting, and I agreed to meet you at our remote office in Greenbelt.

* * *

[30] Q Now, do you also recall during that meeting that I told you there needs to be an investigation that accounts are being opened without customers' knowledge?

A I do.

Q Okay. And do you remember particularly who I said in my immediate banking center was doing that?

A I don't remember you identifying an individual, more so that it was broad based.

* * *

Q Okay. Now, going into January of 2005, do you recall me contacting you letting you know that the harassment was getting very bad in the banking center, and do you recall that conversation?

A Not specifically that topic, you did call me, but you talked about a lot of things, so I don't remember specifically that item, no.

* * *

[31] Q Mr. Frye, Mr. Meehan, was your boss when you came in January 2005, correct?

A That's right.

Q Okay. And did you ever go to him for advice on my particular complaints?

A Not that I recall, no.

* * *

[33] Q Okay. Now, Mr. Meehan, can I ask you please when the first time you spoke with anyone, any bank counsel regarding, after my termination?

After my termination on February 25th, 2005, when the first time you spoke with any bank counsel?

A I don't recall the first time. I mean, I don't have a date for you, I don't know the exact date, but it was prior to, as I recall, prior to my return to the bank.

Q Okay. As a matter of fact, when did you leave Bank of America?

A April of 2005.

Q Okay. And do you recall February the 17th, or actually, February the 16th, at that time, a phone call that I made to you?

A Not a specific phone call, no, I don't remember.

Q Okay. Do you recall, do you recall me calling you and explaining to you that I just got accused of falsifying my time sheets in front of customers? Do you recall that conversation?

A I recall you calling me to talk about the conversation that you had had about time sheets, yes.

Q And that I said it was getting pretty serious, and I was going to have to take alternative measures and go to North [34] Carolina?

A I don't remember your specific words, but I know you were upset.

* * *

[35] BY MS. COLLIS:

Q Okay. So, Mr. Meehan, do you recall, I'm sorry, the year that you spoke with Ms. Marcuss for the first time?

A I don't. As I said earlier, I don't recall a date.

Q And so February 17th I complained but you didn't take any, you thought it would be handled internally, correct? And you thought my manager would handle it with me?

A Yes.

Q Okay. And then, Mr. Meehan, you were at a conference. Do [36] you remember -- I'm sorry. Do you remember when you were at a conference with Melody Vaughn?

A I do.

Q And when would that be?

A It was in February of 2005.

Q And that date you remember?

A Well, yes, it was, it was a two-day conference, so it was the 23rd and 24th of February.

Q Right. No, I'm just asking but that date you remember?

A Yes.

Q Okay. You just don't remember, I'm sorry, when you met Ms. Marcuss for the first time or talked to her over the phone?

MS. MARCUSS: Asked and answered.

MS. COLLIS: Okay.

* * *

BY MS. COLLIS:

Q I'm sorry. So, Mr. Meehan, there's an affidavit here. So is it your testimony today that you have never documented anything in my file as far as counseling? Did you ever counsel me, Mr. Meehan?

A Yes.

Q Mr. Meehan, could you please tell the ladies and gentlemen of the jury when you counseled me?

A I wouldn't be able to tell you specific dates that we [37] spoke.

Q Okay. I met you – I'm sorry, how many times did you meet me, Mr. Meehan, in person?

A I, I, I couldn't even tell you. I don't know how many times we spoke in person.

Q Okay. Well, I think we've established or have we established that you did come to my banking center, we did meet in Greenbelt where I complained about discrimination and fraud, correct? I'm sorry. Did we, so that – did we meet twice? Right. Okay. So

after, I'm sorry, after the meeting in Greenbelt, when did you meet with me again in person to counsel me?

A I don't know. I couldn't, I could not begin to say when or how many times we met in person.

Q Don't know. Exhibit 35 please. Is this an affidavit of yours, Mr. Meehan?

A Yes.

Q Now, and is this your signature, Mr. Meehan?

A It is.

Q Okay. And that was dated February, 2008, correct?

A Yes, it is.

Q Okay. Now, you left the banking center when?

A Left the bank?

Q I'm sorry. You already answered that I believe. When did you come back to the banking center, I'm sorry, to the Bank of [38] America?

A I came back to the bank in January of 2008, yes.

Q Right. Now, you came back to the banking center after a few years, and who contacted you to come back to the banking center or to the Bank of America?

A Who contacted me to come back to Bank of America?

Q Mm-hmm.

A The initial contact?

Q Yes.

A Was a friend of mine in Charlotte, when I worked for the bank in Charlotte. His name is Clay Lewis.

Q Okay. So you came back January 2008. Do you remember the day at all that you came back?

A The exact date I returned?

Q Yes.

A It was right around the first. I just know I had several weeks off at Christmas time, and the bank had agreed to give me that vacation time from my old job to come into this new one, but the exact date I couldn't tell you.

Q So within maybe three weeks you came back to the bank after being gone since right after my termination, and then you're back, and you sign an affidavit; is that correct?

A Well, it's, this is dated the first of February, so within three to four weeks, yes.

Q Okay. And so your testimony is a friend in North Carolina [39] asked you to come back to Bank of America?

A No, that was not my testimony.

Q I'm sorry. I'm sorry. I won't say that. Strike that. Who provided you with this affidavit?

A Ms. Marcuss.

MS. MARCUSS: Your Honor, may we approach?

THE COURT: All right. Come up.

(Bench conference.)

MS. MARCUSS: This is getting entirely far from the issues in this case. She's trying to suggest some improper purpose. Ms. Collis knows very well the Motion for Summary Judgment deadlines in both of these cases were right after these dates, which is why I obtained affidavits from Mr. Meehan. Relatedly, this affidavit was submitted in the Sarbanes-Oxley case or a Motion for Summary Judgment. The deadline was around this time.

There's nothing nefarious, and her suggestion otherwise is completely inappropriate for a jury that doesn't understand how litigation works, and that when one part has to file a Motion for Summary Judgment, they have the right to get affidavits from their witnesses in support of that motion.

MS. COLLIS: Your Honor, the suggestion is that when he terminated me, they were firing him and that's why he left. When they finished the investigation, because of what he did to me, they need an affidavit and now they bring him back, give him [40] a position, and he signs it.

THE COURT: Let me hear your question. What's the question?

MS. COLLIS: I asked him who provided him the affidavit, because he didn't remember when he spoke with her. Now, all of a sudden he remembers that she gave him that.

MS. MARCUSS: She has no evidence to back that up.

THE COURT: What is the point?

MS. COLLIS: The point is that for two months after my termination, the bank investigated what he did to me and then he was gone from the bank.

THE COURT: Why don't you ask him that directly? Ask him that directly rather than who provided –

MS. COLLIS: Okay. I don't have –

THE COURT: Ask him directly whether he left the bank afterwards and did he have anything to do with the investigation that took place. You can ask him that question.

MS. MARCUSS: She's already asked the first part of that.

MS. COLLIS: Right, but it's, there's an inference that they needed to him to sign and now they give a position that –

* * *

[47] BY MS. COLLIS:

Q Okay. So do you recall repeated phone calls that I made to you regarding how bad it was getting in the banking center?

A I recall repeated phone calls where you brought up a variety of issues.

Q Okay. And were you counseling me at the same time I was bringing up those variety of issues, or did you counsel me, do you think, on a separate day?

A I think it would depend on the situation. Some of them are simultaneous. Some are them are times when a manager is listening to an employee. Sometimes it's a pure coaching session. It would depend on the call and these were a variety of calls or meetings.

* * *

[49] Q So February 24th, the evening of, you now are speaking to Ms. Vaughn about my behavior.

THE COURT: Ask a question,

BY MS. COLLIS:

Q What action did you decide to take?

A I decided that, based on what we do every day, that Melody needs to build a team that can service the needs of the customers in the Beltsville community, that we've got to put together a team that's going to work together and deliver on what our

customers expect out of us. When we have associates that are continually not reacting positively to coaching, [50] further corrective actions or decisions are made.

And at that point, because it was just continuing to be the same thing every time there was a conversation, your behavior, your inappropriate behavior reacting to what was said, I decided that we would terminate, and that I would come to Beltsville tomorrow and do that, tomorrow being the 25th, the next day.

* * *

[52] Q Okay. So do you recall February – back up a second. Do you recall numerous conversations that I've had, specifically one on February 17th, do you recall me saying I had to take alternate measures and go to North Carolina? Do you recall that, a conversation?

A I don't remember the exact language, but I do recall that you were, as I perceived it, were wanting to go over my head, I think is what that statement was.

Q Okay. And then do you recall February 25th, the next morning, me calling out sick?

A Do I recall that? Yes, I do.

Q Okay. Do you recall me telling you I was in severe pain due to the harassment for the last couple days?

A No, I do not.

Q Okay. And during that conversation, what did you relay to me in the conversation when I called out sick?

A That your employment with Bank of America had ended.

Q Okay. And I tried to ask you some questions and then what was your response?

[53] A I deferred you to personnel, that if you had further questions you could take those to personnel.

Q Mr. Meehan, do you recall telling me that I was not allowed to ask any questions?

A No, I don't recall the exact phrase. I know that I, repeating, that I deferred those to personnel.

Q And, Mr. Meehan, do you recall that conversation you telling me now I can take whatever alternative measures I need to take?

A No, I do not.

Q You don't recall that at all?

A Specifically that, no, I do not.

Q And do you recall telling me that I needed just to come in and pick up my belongings then?

A No, what I said was that you and I would meet at a pre-arranged date to pick up your belongings.

Q Exactly, but just to come pick up your belongings. And did I ever, in that conversation, have a chance to tell you my side of the story?

A No. I didn't ask for your side of the story, no, if that's what you mean. The, the discussion was simply stating that the employment had ended and that you would be allowed to get your personal belongings, and that you and I would meet at a pre-arranged date to do that, but it would not be that day.

Q Okay. Now, Mr. Meehan, do you recall me telling you, [54] "Please, Mr. Meehan, these are the same two women that I've been complaining about"? Do you recall that?

A On that call, no. I, as I noted, it was a very short call covering basically what I just said a moment ago.

* * *

[56] Q I'm sorry. I'm sorry. Did anyone ever counsel you on you terminating me over the phone?

A No.

* * *

[Cross-examination from Elena Marcus]

[64] Q Now you've already testified today, so I don't want to rehash your testimony, but you testified

about a meeting in November with Ms. Collis in the Greenbelt office where Mr. Harris was as well. Do you remember your testimony about that?

* * *

Q What, if anything, did you do in response to Ms. Collis' claims about the fraud?

A I went to our corporate security. We have an extensive corporate security department, and I went to an individual there and asked her to do an internal investigation on the associates in the bank, in the Beltsville banking center to determine if, in fact, we did have some type of individual or widespread fraud [65] occurring in that banking center.

Q Do you know the outcome of that investigation?

A She did not find anything that indicated fraud occurring there.

* * *

[70] Q What was your role, if any, in that termination?

A I did the termination. I spoke directly to Ms. Collis.

Q Well, I presume you knew something was happening before the morning of February 25th?

A I did.

Q How did you know what was going on?

A Well, the, the manager, Ms. Vaughn, was with me at a, what we called a banking center manager's summit in Baltimore. It was a two-day summit. And at some point on the second day of the summit, which was to have been the heart of the meeting, it [71] began to snow and the meeting had to be canceled. And so, we all left that meeting early and, as I recall, we were on a charter bus. We had bussed our entire team up to Baltimore.

* * *

I don't recall the specifics on that, but at some point everyone ended up speaking to each other about just what was occurring. And because the meeting had ended early, Ms. Vaughn had the opportunity to go back to the banking center and issue the corrective actions that we have discussed already. And, and I did ask her to do that because the day had ended early, and I asked her to go back and issue those corrective actions.

Q So you knew that Ms. Vaughn is going back to the banking center to issue corrective actions to Ms. Collis on the evening of February 24th, 2005?

A I did.

Q Did you ever learn what happened when she did that?

A Yes. Because, because Melody, Ms. Vaughn, called me at home and made me aware that it went as other corrective conversations had gone, very poorly. There was no sign that Ms. Collis wanted to

improve the behavior, had any intentions of [72] changing the behavior, that anything was going to change in the future, which is the purpose of corrective action. And so, I said to Ms. Vaughn that it was time to stop this for the benefit of the banking center, for the benefit of our customers and chose to go the route of termination.

* * *

Q I take it there was no allegation that Ms. Collis was inappropriate with customers?

A No.

* * *

[Redirect from Torina Collis]

[73] Q Your Honor or Mr. Meehan, you stated that you just stated that Melody Vaughn, prior to going to the banking center, that you directed her to write me up. Was that your statement that you directed her prior to her getting to the banking center? Was that just your statement that you directed her for written counseling prior to her getting to the banking center?

A I don't think that was my exact statement, no.

Q Could you please repeat, when you and Melody Vaughn were having a discussion, what the conversation was about regarding the written counseling prior to her reaching the banking center? Sorry. Could you please tell us and the ladies and gentlemen of the jury the discussion you had with

Ms. Vaughn about the write-ups prior to her getting to the banking center?

A As I recall, I had asked her to, because the day had ended early, she had time to go back to the banking center to work with Lisha and understand what had happened so that they could, if they needed to, deliver corrective action to you.

* * *

[75] Q But, Mr. Meehan, so, and again you got this information after our conversation in November. I'm sorry, you got the information about my inappropriate behavior towards associates after the – the meeting in November of 2004 that we had in Greenbelt, is that when they started telling you that I had inappropriate behavior?

A Yes.

* * *

[78] Q Are you aware, Mr. Meehan, in 2005, July, sorry, exhibit, Exhibit 40, did you make a statement at all to the Department of Labor?

A Did I make a statement to the Department of Labor, no.

Q Okay. And you left again in April of 2005. This letter was generated to the Department of Labor in July of 2005, which you were not there. Do you recall making any statements to anyone shortly after you left, any attorney for the bank?

A Well, as I answered you earlier –

MS. MARCUSS: Objection.

THE WITNESS: I don't know.

MS. COLLIS: Okay.

BY MS. COLLIS:

Q Now according to this, Mr. Meehan, according to this letter, it says that Ms. Collis was given a written counseling on February the 22nd, 2005. Is that an accurate statement, Mr. Meehan?

[79] A It was, it was as – it was dated on the 24th.

Q Well it was typed, right, on the 22nd. You're right. Signed on the 24th, correct, the two write-ups that you saw earlier or they saw earlier, but on the 22nd, I was not given a write-up?

A No, we've shown that they were signed on the 24th.

Q Okay. So, this would not be an accurate statement that, on February 22nd, that I received a written counseling?

A No.

Q Thank you. Now, just, I'm sorry, won't take much longer.

* * *

[80] Q Then I'd like to ask you where Ms. Marcuss asked you about the fraud complaint I put in with you. And what did you do in that circumstance?

I'm sorry, corporate security. Was there any documentation at all regarding any complaints on that issue as well? I mean did you document anything about my complaint on the fraud as well?

A In respect to your file?

Q In respect – no, did you document anywhere. Well, there's nothing – did you ever document anything that I made a complaint that customers' accounts were being opened without their knowledge? Did you document that anywhere?

A To the extent that you bought it up, no. It had nothing to do with you. It had to do with whether or not there were accounts being opened inappropriate at the Beltsville banking center. That was investigated by corporate security.

Q But it's your testimony that I said it was just in Beltsville?

[81] A Yes.

Q And what is your – with Bank of America, are you familiar with the retaliation policies?

A Specific enough to quote them, no. But we do not obviously permit retaliation.

Q Okay, I'm sorry?

A We don't obviously permit retaliation.

* * *

[83] Q Okay. So Mr. Meehan, to have a goal of 1.8 million for the quarter in '04 and then a few months later to go to 2.9 million, do you feel that's a drastic increase?

A In 2004, I don't. If you'll recall, the housing market was pretty hot back then, and so a consumer real estate goal would not have been a dramatic increase at that time.

* * *

[84] MS. COLLIS: All right. Sorry. I'll take no further questions.

THE COURT: All right. Have a seat then. Anything further?

MS. MARCUSS: No, Your Honor.

* * *

LISHA THORNE HOLLOWAY, PLAINTIFF WITNESS, SWORN

THE DEPUTY CLERK: Please have a seat on the witness stand. Ma'am, please speak directly into the microphone, state your name and spell your last name.

[85] THE WITNESS: Lisha Michelle Thorne Holloway, T-H-O-R-N-E, H-O-L-L-O-W-A-Y.

THE COURT: Would you please spell your first name?

THE WITNESS: L-I-S-H-A.

THE DEPUTY CLERK: Thank you.

* * *

[116] Q Okay. So how would you feel my behavior overall was at the banking center excluding those last two days of my employment there?

A Well, I felt that you had a personal, you had a problem with me whenever I would ask you to do something, or your attitude was very negative toward me if I would ask you to do something for me or something related to your job most of the time.

[117] Q Okay. And can I ask you, Ms. Holloway, did that happen after November 2004?

A Somewhere along those lines.

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

TORINA COLLIS,	:	Civil Action No.
Plaintiff,	:	PJM 06-2451
v.	:	Greenbelt, Maryland
BANK OF AMERICA NATIONAL ASSOCIATION,	:	Tuesday, October 27, 2009
Defendant.	:	10:20 A.M.
	/	

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:
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13240 Star Gazer Place
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240-508-5498

FOR THE DEFENDANT:
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OFFICIAL COURT REPORTER:
LINDA C. MARSHALL, (301) 344-3229

COMPUTER-AIDED TRANSCRIPTION
OF STENOTYPE NOTES

[2] **I-N-D-E-X**

WITNESSES

On behalf of the Plaintiff:

	Direct	Cross	Redirect	Recross
Michael Joy				
By Ms. Collis	93			
By Ms. Marcuss		114		
Tara Gallman				
By Ms. Collis	115			
By Ms. Marcuss		144		
Walter Frye				
By Ms. Collis	147			
By Ms. Marcuss		160		
By Ms. Collis			161	
By Ms. Marcuss				167

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Defendant's Opening Statement 85

* * *

[115] **TARA DOROTHY GALLMAN, PLAINTIFF WITNESS, SWORN**

THE DEPUTY CLERK: Ma'am, please speak directly and loudly into the microphone, state your name and please spell your last name.

THE WITNESS: My name is Tara Dorothy Gallman, and my last name is G-A-L-L-M-A-N.

* * *

[116] Q Okay. So that's your name?

A That's me.

Q Personal banker?

A Mm-hmm.

* * *

[136] THE WITNESS: I think so. I know that there were two separate days. I know that you called me when you had got let go. I wasn't there that day at all. And there was one day when there was a time sheet incident. I remember something about some papers or something like that and I don't remember.

BY MS. COLLIS:

Q Correct. And according to your testimony, I never had inappropriate behavior, so on February 16th when she approached me at my desk, accused me of falsifying my timesheets that time, I guess I wouldn't have had inappropriate behavior that day either, according to your testimony? You didn't see me storm [137] out –

A I didn't see anything like that.

* * *

[142] Q Okay. So you were pretty much there every day that I was there?

A Yes.

Q And you never witnessed me having any inappropriate behavior towards any associates, customers?

A No.

* * *

[146] **WALTER FRYE,**
PLAINTIFF WITNESS, SWORN

THE DEPUTY CLERK: Please have a seat on the witness stand. Sir, please speak loud and directly into the microphone, [147] state your name and spell your last name.

THE WITNESS: Yes. My name is Walter Frye, F-R-Y-E.

* * *

[148] Q Okay. And then when you came up to this northeast region, what position did you take?

A I was at that time senior vice-president, and the role was consumer market executive.

* * *

[149] A I joined the northeast region in January of 2005.

Q Okay. And at that time, did Mr. Meehan ever approach you about complaints that I had given him

regarding several issues, one being racial discrimination and also fraud? Did he ever approach you with that?

A I don't recall being approached with that specifically.

* * *

[150] Q Okay. And if I could ask you when, if you have, did you speak to any representatives from Bank of America regarding anything about this lawsuit?

A Representatives of the Bank of America, I did. I did receive a call from Ms. Marcuss' firm to, to coordinate and to ensure I had the right information about the case, administratively or so.

Q Do you remember the first time that Bank of America's attorney contacted you? I mean, you do realize that your name is in the complaint, so did they ever come to you and talk to you about this case, and when was the first time please?

A The first time that I was contacted about this case was [151] probably three weeks ago after your call to me.

* * *

Q Typically, when would a market manager – well, first of all, were you aware of any inappropriate behavior that I had in the banking center?

A Again, it's, it's been a while, several years, but I don't recall specifically your name associated with inappropriate behavior. Again, I just don't have the details that would confirm or deny honestly.

* * *

[160] Q Okay late January. To what extent, if at all, were you involved in the decision to terminate Ms. Collis' employment?

A A decision was made by Mr. Meehan, and he advised me of the decision, and that's often the case with banking center managers and market managers who have that responsibility to manage a lot of the portions of the market based on the size of it and the complexity of it.

Q Okay. So the decision was made by him, not by you?

[161] A No, it was not made by me.

* * *

THE COURT: I'm sorry. I thought you said you didn't recollect anything about the termination of Ms. Collis? Do you or don't you remember her being terminated?

THE WITNESS: I recall – no, I don't recall the details of her termination, but I do recall that the process we took and all of our terminations in general, and I do recall the, Mr. Meehan talking about the termination of Ms. Collis. So I do recall that it –

THE COURT: I'll let you inquire. Let's, I thought you said you didn't recall anything, and now I'm hearing you say there was some conversation. You open the inquiry, and we'll find out exactly what was said between him and Mr. Meehan and when.

MS. COLLIS: Right.

* * *

BY MS. COLLIS:

Q What do you know please about my termination? And you came [162] in January of 2005, and I'd like to know if you can tell the ladies and gentlemen of the jury please, and I want to remind you that you are under oath, of what Mr. Meehan told you about any of my complaints or just about any conversations that he had with me?

A Yeah, I do not recall any conversation about that you mentioned before discrimination in the marketplace. I don't recall that. What I do recall are the circumstances in terms of my memory about being in the office, him – and this really came through in the last few weeks as we've had these, that you've talked to me especially.

That he, he came to me, and he presented that there was a, that I recall your name now after we've kind of had this conversation the last few weeks, that he recommended and he actually had terminated Ms. Collis, and that my position was I did ask about the circumstances. Again, I don't recall all the details of it, but I do recall that Mr. Meehan had come to me

with advisement that he had terminated Ms. Collis, and that, that we had, that he had shared with me that it was based on some performance. I just don't recall all the details of it to be frank since just coming back to this after about three or four years.

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

TORINA COLLIS,	:	Civil Action No.
Plaintiff,	:	PJM 06-2451
v.	:	Greenbelt, Maryland
BANK OF AMERICA NATIONAL ASSOCIATION,	:	Wednesday, October 28, 2009
Defendant.	:	10:30 A.M.

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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FOR THE DEFENDANT: ELENA D. MARCUSS, ESQUIRE
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OFFICIAL COURT REPORTER:
LINDA C. MARSHALL, (301) 344-3229

COMPUTER-AIDED TRANSCRIPTION
OF STENOTYPE NOTES

[2] **I-N-D-E-X**

WITNESSES

On behalf of the Plaintiff:

	Direct	Cross	Redirect	Recross
Sumeana Leslie				
By Ms. Collis	26			
By Ms. Marcuss		32		
By Ms. Collis	36			
Ricardo Grant				
By Ms. Collis	40			
By Ms. Marcuss		47		
By Ms. Collis			49	
Rakesh Raina				
By Ms. Collis	52			
By Ms. Marcuss		64		
By Ms. Collis			72	
Carmen Soria				
By Ms. Collis	84			
By Ms. Marcuss		89		
By Ms. Collis			90	
Satish Peters				
By Ms. Collis	97			
By Ms. Marcuss		124		
By Ms. Collis			129	
By Ms. Marcuss				134
Nancy Akron				
By Ms. Collis	109			
By Ms. Marcuss		112		
By Ms. Collis			113	

Melody Vaughn
By Ms. Collis 139
By Ms. Marcuss 187
By Ms. Collis 215

* * *

[84] **CARMEN SORIA,**
PLAINTIFF WITNESS, SWORN

THE DEPUTY CLERK: Please have a seat on the stand. Ma'am, please speak directly into the microphone, state your name and spell your last name.

THE WITNESS: Carmen Soria, S-O-R-I-A.

* * *

[95] Q Okay. But you remember that I didn't have inappropriate behavior according to your testimony?

A I don't remember. Like I said, I don't remember you having any inappropriate behavior at the time that I was there in the lobby.

* * *

[124] Q Okay. Ms. Gallman, there came a time either the end of 2004, 2005 when you had an occasion, there was an altercation with Ms. Holloway?

A Yes.

THE COURT: Your answer yes?

THE WITNESS: Yes.

THE COURT: All right. Go ahead.

* * *

[125] BY MS. COLLIS:

Q Can you please tell the ladies and gentlemen of the jury, Ms. Lisha Holloway that was our service manager responsible for the tellers, reprimanding tellers, would you please tell the ladies and gentlemen of the jury what happened?

A Okay. I'm going to try to remember, you know. I know that there was some sort of issue. We were having a discussion or something like that, and she pushed me. And I just reported the incident to the supervisor and to the higher authorities in the bank. And later on that evening she, you know, her car was facing me or whatever. I guess she attempted. She didn't – I don't know if she was playing or whatever, but she appeared like she was going to hit me with her car.

So, anyways, they gave me a few days off of work and eventually Lisha was transferred to a different banking center and I'm not sure. I know she wasn't a manager anymore. I think she was a teller at that point. So they said they handled the situation and that was the end of it.

* * *

[126] Q Do you know when that happened?

A I don't know exactly when it happened. I don't.

Q And do you remember, if you do, crying at your desk?

A I know I was very upset, so they let me go home that day.

* * *

[138] THE DEPUTY CLERK: Please have a seat on the witness stand. Ma'am, please speak directly into the microphone, state [139] your name and please spell your last name.

THE WITNESS: Melody Vaughn, V-A-U-G-H-N.

* * *

[158] Q Okay. Just to let her know that Jean Rene did get promoted to banking center manager, did he not?

A He posted for a banking center manager. He can't be promoted. He has to actually pass the interview as well as the testing to be a banking center manager.

Q Okay. But that was after the complaints that I had made regarding the fraud?

A Correct.

* * *

[160] Q Okay. So you were gone and you call in and I'm gone. Now, back to your affidavit signed March 24, '08. First of all, Ms. Vaughn, this is date

the 22nd, but what date did you actually give it to me?

[161] A On February 24th.

* * *

[165] Q Okay. Your testimony today is that, is it not, that you gave me the write-ups on the 22nd of February?

A No.

Q I mean, I'm sorry, the 24th of February?

A Correct, the 24th of February.

* * *

[178] Q Sure. This is your service manager. Did she not sit right next to you in the banking center and give me this as well along with yours?

A She's the one that did this write-up. She gave it to you along with the one that I provided for you. So she's the one that actually did this write-up.

Q Right, she did this. Do you remember coming in the banking center the evening of the 24th, going back to your office, typing up and having her type up this write-up and you giving them both to me on the evening of the 24th?

A Correct. I typed up the one that I provided. I didn't type up this one.

* * *

[179] Q Right. But when you came into the banking center that evening and you had already determined that evening you were going to terminate me based on this write-up, correct?

A We wanted to reprimand you that evening because I had to be called from a meeting in Baltimore, and that's when the way you handled it when we tried to sit down with you with this final warning is what led to the termination the next morning.

* * *

A I actually had spoken to regionals that evening because you had walked out of this meeting when we presented you with the two write-ups and discussed with them that I would feel more comfortable because we had had several issues with you raising your voice and being very irate. And that I felt like this was something that we needed their assistance in in handling you particularly.

* * *

A That evening I don't remember. I remember you walking away and getting up very upset and walking away and leaving that day. I do not recall you going back to your desk and working.

[216] Q Okay. Now, in June, you've testified in June 2004 that I, two other personal bankers went and set up checking accounts. That was our job. But do you remember when I came to you about Jean Rene that I reported fraud? How did you investigate that?

A You didn't actually just do it for Jean Rene. Like I [217] stated to you when you brought it up before, it was Jean Rene and Rakesh Raina that you said that they were product pushing because someone came to you and said that they had an account that they weren't aware of. I asked you what it was from. You specifically told me it was from a direct benefits that you all did prior to me getting to the banking center.

I asked you to give me the person's account number. When I pulled it up, I was able to see the time frame where all of you opened up the accounts. I asked you guys did you have your forms so that I could check it, but you all opened up accounts for the direct benefits prior to me being the manager there.

Q Exactly. Now, when someone comes to you and says here's a customer's phone number –

A You did not give me the customer's phone number. You just came to me personally and said you felt like that he was product pushing because the customer wasn't aware of the savings account.

Q Ms. Vaughn, you just testified that I said, I asked you or I told you that a customer had an account opened without their knowledge. Is that called product pushing? Can you explain product pushing again please? There's a difference between pushing a product when the customer is there and opening an account without their knowledge when they're not there?

A Product pushing can be with the person there or not there. Product pushing is giving, regardless, product pushing is giving [218] someone a product that they did not ask for and without their knowledge regardless. Product pushing is, regardless if the person is in front of you or is not in front of you. It could be that you're making a sales call.

* * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MARYLAND

TORINA A. COLLIS, Plaintiff,	:	
vs	:	Civil Action: PJM-06-1346
BANK OF AMERICA, Defendant.	:	

Wednesday, August 13, 2008
Greenbelt, Maryland

The above-entitled action came on for Motions Hearing proceedings before the HONORABLE PETER J. MESSITTE, United States District Court Judge, in courtroom 4C at 2:03 p.m.

APPEARANCES:

On behalf of the Plaintiff:
MORRIS E. FISCHER, Esquire

On behalf of the Defendant:
ELENA D. MARCUSS, Esquire

Tracy Rae Dunlap, RPR, CRR (301) 344-3912
Official Court Reporter

* * *

[3] THE COURT: This is in 06-1346; it's paper 35.

MS. MARCUSS: Thank you, Your Honor. As our briefing on this issue pointed out, there is

one dispositive Fourth Circuit case on the matter, *Livingston versus Wyeth*. We believe that under the rulings in *Livingston versus Wyeth*, it's clear that Ms. Collis cannot establish that she engaged in protected activity. What's important here is that for purposes of summary judgment, it is Ms. Collis' own testimony [4] and statements that provide the only material facts, and they are undisputed. Thus, the question is purely legal: Do Ms. Collis' reports regarding her belief that other personal bankers at the Beltsville banking center were opening accounts without the customer's knowledge satisfy the second element of cause of action under the act, which is essentially that she engaged in protected activity.

* * *

[7] Given the limited base's for Collis' reports, as well as her admission that her concern was for customers, not the shareholders, Collis also cannot establish that she subjectively believed she was reporting a violation of – that she was reporting shareholder fraud or a violation of the law. Thus, it's clear that she cannot establish the fourth element or the second element of a claim, that she engaged in protected activity.

* * *

Finally, Ms. Collis cannot sustain her claim because the evidence is clear that the bank had

legitimate and non-retaliatory reasons for her termination. We submitted three affidavits that explained explicitly –

* * *

U.S. Code Title 18

§ 1001. Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully –

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to –

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

SARBANES OXLEY SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

(a) IN GENERAL – Chapter 73 of title 18, United States Code, is amended by adding at the end the following: 'Sec. 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy. 'Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or

case, shall be fined under this title, imprisoned not more than 20 years, or both. 'Sec. 1520. Destruction of corporate audit records

'(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

'(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section.

'(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 10 years, or both.

'(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.'.

(b) CLERICAL AMENDMENT – The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

'1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

'1520. Destruction of corporate audit records.'.